

1 WILLIAM F. WRIGHT - SBN 109470
2 JULIE A. DOUMIT - SBN 272574
3 LAW OFFICES OF WILLIAM F. WRIGHT
4 1731 J Street, Suite 250
5 Sacramento, California 95811
6 Telephone: (916) 442-8614
7 Facsimile: (916) 442-5679

8 Attorneys for Plaintiffs Jovan Bray,
9 Elisha Kranenburg, and Michelle Brown

FILED
Superior Court Of California,
Sacramento
06/23/2016
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By _____, Deputy
Case Number:
34-2016-00196448

10
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12
13 IN AND FOR THE COUNTY OF SACRAMENTO

14 JOVAN BRAY, ELISHA KRANENBURG,)
15 and MICHELLE BROWN,)

16 Plaintiffs,)

17 vs.)

18 ESHAI CORPORATION, DBA COURIER)
19 DISTRIBUTION SYSTEMS, and DOES 1)
20 through 20, inclusive,)

21 Defendants.)

CASE NO:

COMPLAINT FOR DAMAGES

(Unlimited Civil Case)

22 Plaintiffs Jovan Bray, Elisha Kranenburg, and Michelle Brown allege:

23 PARTIES

24 1. Defendant Eshai Corporation is a corporation organized under the laws of The State
25 of Georgia, and does business under the name of Courier Distribution Services (CDS). Said
26 defendant is hereafter referred to as "CDS."

27 2. The names or capacities, whether individual, corporate, associate, or otherwise, of
28 defendant Does 1 through 20, inclusive, are unknown to Plaintiffs who therefore sues said
defendants by such fictitious names. Plaintiffs are informed and believe, and thereon allege that each
of the defendants designated herein as a "Doe" is responsible in some manner, either intentionally,
negligently, in strict liability, for breach of warranty, or otherwise, for the events and happenings

1 herein referred to and caused injury and damages proximately thereby to Plaintiffs, as herein alleged.
2 Plaintiffs will amend this Complaint to insert the true names and capacities of the fictitiously named
3 defendants when ascertained.

4 3. The use of the term "Defendants" herein shall mean CDS and Does 1-20.

5 4. At all times herein mentioned, each of the Defendants was the agent and employee
6 of each of the remaining Defendants and was acting at all times within the purpose and scope of said
7 agency and employment, and acting in concert.

8 **VENUE AND JURY TRIAL DEMAND**

9 5. Venue is proper in Sacramento County because the acts alleged herein occurred in
10 the County of Sacramento, in the State of California.

11 6. Plaintiffs hereby demand a jury trial.

12 **GENERAL ALLEGATIONS**

13 7. At some point prior to September 2015, Defendants entered into a contract with an
14 Amazon entity to provide delivery services in the Sacramento area for Amazon Prime. Defendants
15 established an office at 2934 Ramana Avenue in Sacramento. The early hires at said location
16 included dispatch managers, including plaintiff Jovan Bray. Jovan Bray received training in which
17 he was instructed about the Amazon Prime three hour package delivery deadlines and his role in
18 dispatching drivers.

19 8. Plaintiffs Elisha Kranenburg and Michelle Brown were hired as drivers. Deliveries
20 started on or about October 28, 2015. The events alleged in this Complaint concern unlawful wage
21 payments to the drivers after October 28, 2015, and the subsequent wrongful termination of Jovan
22 Bray because of his objections to the unlawful payments.

23 9. During plaintiffs' employment, provisions of the California Labor Code and
24 Institutional Welfare Commission governed payment of wages to plaintiffs, as well as the other
25 drivers and employees. These statutes and/or wage orders included:

26 a. Labor Code Section 204(d), which requires payment of wages within 7 days
27 of the payroll period.

28 b. Labor Code Section 351 which requires payment of tips to employees. For

1 drivers, tips were collected by Amazon and sent to CDS.

2 c. Labor Code Section 226, which requires accurate wage statements.

3 d. Labor Code Section 203 which provides for waiting time penalties for up to
4 30 days for non-payment of wages.

5 10. Defendants did not comply with these statutes concerning drivers. Defendants failed
6 to pay drivers on time, failed to account for tips, failed to pay all tips, failed to pay overtime wages,
7 and failed to provide accurate wage statements. This non-payment of wages led to many complaints
8 by drivers. Many drivers asked Jovan Bray to contact the corporate offices in Georgia to complain
9 about non-payment of wages. Jovan Bray did, on several occasions, make telephone calls to the
10 George headquarters.

11 11. On or about December 22, 2015, despite his good performance, defendants terminated
12 Jovan Bray's employment in retaliation for his complaints. There was no legitimate non-
13 discriminatory reason to terminate his employment.

14 12. At the end of December 2015, plaintiffs Elisha Kranenburg and Michelle Brown were
15 laid off. Other drivers continued to work for defendants. Plaintiffs were informed that they did so
16 through April 2016, when Amazon cancelled the CDS contract.

17 13. Defendants' drivers were also denied rest and meal breaks. Drivers worked morning
18 and afternoon shifts. They had to arrive one half-hour early for the 8 hour shifts. Thirty (30)
19 minutes was deducted for lunch, resulting in 8 hours' pay plus overtime worked. However, due to
20 their busy delivery schedule, drivers were unable to take rest or meal breaks. This resulted in a loss
21 of 30 minutes pay per day, which would have been at overtime rate.

22 **PRIVATE ATTORNEY GENERAL ACT ALLEGATIONS**

23 14. The Private Attorney General Act ("PAGA"), as set forth in California Labor Code
24 sections 2698, et seq. is, and was at all times relevant herein, applicable to plaintiffs' employment
25 with defendants.

26 15. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which
27 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
28 Agency ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through

1 a civil action brought by an aggrieved employee on behalf of himself or herself and other current or
2 former employees pursuant to the procedures outlined in Labor Code section 2699.3.

3 16. Plaintiffs Elisha Kranenburg and Michelle Brown were employed by defendants and
4 the alleged wage violations were committed against them during their employment. Elisha
5 Kranenburg and Michelle Brown are therefore aggrieved employees as defined by Labor Code
6 section 2699(c). Other current and former employees are also aggrieved employees in that one or
7 more of the alleged violations were also committed against them during their time of employment
8 with defendants.

9 17. Pursuant to Labor Code section 2699(f), the civil penalty recoverable in a PAGA
10 action is that which is provided for by the Labor Code or, where no civil penalty is specifically
11 provided, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
12 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
13 subsequent violation.

14 18. Pursuant to California Labor Code section 2699(g), an aggrieved employee may
15 recover the civil penalty on behalf of himself or herself and other current or former employees
16 against whom one or more of the alleged violations was committed. Furthermore, any employee
17 who prevails in any such action shall be entitled to an award of reasonable attorney's fees and costs.

18 19. Pursuant to Labor Code section 2699.3, an aggrieved employee may pursue a civil
19 action arising under the PAGA after the following requirements have been met:

20 a. The aggrieved employee shall give written notice by certified mail to the
21 LWDA and the employer (hereinafter "Employee's Notice") of the specific
22 provisions of the California Labor Code alleged to have been violated,
23 including the facts and theories to support the alleged violations;

24 b. The LWDA shall provide notice (hereinafter "LWDA's Notice") to the
25 employer and the aggrieved employee by certified mail that it does not intend
26 to investigate the alleged violation within 30 calendar days of the postmark
27 date of the Employee's Notice. Upon receipt of the LWDA's Notice, or if the
28 LWDA does not provide notice within 33 calendar days of the postmark date

1 of the Employee's Notice, the aggrieved employee may commence a civil
2 action pursuant to California Labor section 2699 to recover civil penalties in
3 addition to any other penalties to which the employee may be entitled.

4 On February 9, 2015, Elisha Kranenburg and Michelle Brown provided written notice by
5 certified mail to the LWDA and defendants of the specific provisions of the California Labor Code
6 alleged to have been violated by defendants, including the facts and theories to support the alleged
7 violations.

8 20. As of the date of the filing of this Complaint, more than 33 days have passed since
9 plaintiffs provided the Employee's Notice, and the LWDA has not provided written notice to Elisha
10 Kranenburg and Michelle Brown of its intention to investigate the alleged violations. Accordingly,
11 Elisha Kranenburg and Michelle Brown have satisfied the administrative prerequisites under Labor
12 Code section 2699.3 to bring a civil action to recover penalties against defendants, in addition to
13 other remedies, for violations of California Labor Code sections 201, 201, 226.7, 510 and 512.

14 **FIRST CAUSE OF ACTION**

15 **Violation of California Labor Code Sections 226.7(a) and 512 Against All Defendants**
16 **by Elisha Kranenburg and Michelle Brown**

17 21. Plaintiffs Elisha Kranenburg and Michelle Brown individually and on behalf of
18 aggrieved employees reallege and incorporate by reference paragraphs 1 through 20 above as though
19 fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of
20 action.

21 22. Labor Code section 226.7(a) provides that it is unlawful for an employer to deny an
22 employee a meal or rest period required by an applicable law or order of the IWC.

23 23. At all times relevant herein, Labor Code section 512(a) and IWC Order No. 9-2001
24 provided that an employer must provide employees with a meal period of not less than thirty minutes
25 for each five hour work period.

26 24. During the relevant time period, the applicable wage order(s) further provided that
27 an employer shall permit employees to take at least a ten minute break in the middle of every four
28 hour work period.

32. During plaintiffs' employment, plaintiffs Elisha Kranenburg and Michelle Brown, and the other aggrieved employees, were required to report to work 30 minutes prior to the start of their 8 hour shifts and were paid for only 8 hours due, to the deduction of 30 minutes for a meal periods drivers did not receive. Plaintiffs and aggrieved employees should have been paid for 8 1/2 hours with the 1/2 hour at overtime.

33. The civil penalty recoverable by aggrieved employees in a PAGA for violations of Labor Code section 510 are set forth in Labor Code section 2699(f)(2). Labor Code section 2699(f) provides a civil penalty of (1) one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and (2) two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

34. Labor Code section 2699(g) further provides any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs.

35. Plaintiffs Elisha Kranenburg and Michelle Brown, and other aggrieved employees, have been damaged as set forth above and request relief as hereafter provided. Plaintiffs also hereby request the civil penalty, attorney's fees and costs recoverable in a civil action brought by aggrieved employees on behalf of themselves and other current and former employees of defendants.

THIRD CAUSE OF ACTION

Failure to Timely Pay Wages Owed in Violation of Labor Code Sections 200, Et Seq.

Against All Defendants by Elisha Kranenburg and Michelle Brown

36. Plaintiffs Elisha Kranenburg and Michelle Brown individually and on behalf of aggrieved employees, reallege and incorporate by reference paragraphs 1 - 35 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

37. Labor Code section 204 provides that all wages owed are due and payable twice each calendar month.

38. During the relevant time period, defendants failed to pay Elisha Kranenburg and Michelle Brown, and the other drivers, earned wages in full, and in a timely fashion, as required by the Labor Code. This included failure to timely pay wages owed and tips earned.

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39. The civil penalty recoverable by an aggrieved employee in a PAGA for violations of Labor Code section 204 are set forth at Labor Code section 2699(f)(2). Labor Code section 2699(f) provides a civil penalty of (1) one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and (2) two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

40. Labor Code section 2699(g) further provides any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs.

41. Plaintiffs Elisha Kranenburg and Michelle Brown, and other aggrieved employees, have been damaged as set forth above and request relief as hereafter provided. Plaintiffs also hereby request the civil penalty, attorney's fees and costs recoverable in a civil action brought by an aggrieved employee on behalf of themselves and other current and former employees of ESHAI Corporation dba Courier Distribution Systems.

FOURTH CAUSE OF ACTION

Failure to Timely Pay Wages Upon Termination in Violation of Labor Code Sections

200, Et Seq. Against All Defendants by Elisha Kranenburg and Michelle Brown

42. Plaintiffs Elisha Kranenburg and Michelle Brown, individually and on behalf of aggrieved employees, reallege and incorporate by reference paragraphs 1 - 41 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

43. Labor Code section 201 requires an employer, when discharging an employee, to immediately pay the wages earned and unpaid at the time of discharge.

44. During the relevant time period, defendants failed to pay plaintiffs Elisha Kranenburg, Michelle Brown, and the other drivers, all earned but unpaid wages at the time of discharge.

45. Labor Code section 203(a) provides a civil penalty of up to 30 days wages.

46. The civil penalty recoverable by an aggrieved employee in a PAGA for violations of Labor Code section 204 are set forth at Labor Code section 2699(f)(2). Labor Code section 2699(f) provides a civil penalty of (1) one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and (2) two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

54. Wherefore, Elisha Kranenburg, Michelle Brown, and the other drivers, have been damaged as set forth above and request relief as hereafter provided. They also hereby request the civil penalty, attorney's fees and costs recoverable in a civil action brought by an aggrieved employee on behalf of themselves and other current and former drivers.

SIXTH CAUSE OF ACTION

Termination in Violation of Public Policy by Jovan Bray Against All Defendants

55. Plaintiff Jovan Bray repleads and realleges the allegations of paragraphs 1-13.

56. It is the public policy in the State of California that employers comply with the California Labor Code. Further, California Labor Code sections 232.5 and 1102.5 provide that an employee has rights under the Labor Code and that the employer shall not discriminate or retaliate against an employee for asserting those rights.

57. The termination of Jovan Bray's employment by defendants on or about December 22, 2015, was in retaliation for his requests that employees receive their pay. This was contrary to the above public policies of the State of California.

58. As a proximate result of the above described conduct of defendants, and each of them, plaintiff Jovan Bray was prevented from attending to plaintiff's usual occupation, and plaintiff is informed and believes and thereon alleges that he will thereby be prevented from attending his usual occupation for a period in the future in an amount according to proof at trial.

59. As a further proximate result of the above described conduct of defendants, and each of them, plaintiff Jovan Bray was hurt and injured in his health, strength and activity, sustaining emotional injury and shock, and injury to his nervous system and person, all of which said injuries have caused and continue to cause plaintiff great mental, emotional, and nervous pain and suffering in an amount according to proof.

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1 PRAYER FOR RELIEF

2 WHEREFORE, plaintiffs pray for judgment against defendants as follows:

3 As to First, Second, Third, Fourth, and Fifth Causes of Action for Defendants Elisha
4 Kranenburg and Michelle Brown

- 5 1. For civil damages and/or statutory penalties, including those available pursuant to the
6 California Labor Code;
7 2. For statutory attorney's fees and costs, including those available for non-payment of
8 wages owed, and attorney's fees available under 2699(f);
9 3. For pre-judgment interest;

10 As to the Sixth Cause of Action for Jovan Bray

- 11 4. For lost income and wage benefits according to proof;
12 5. For general damages according to proof;
13 6. For pre-judgment interest;

14 As to All Causes of Action

- 15 7. For costs of suit; and
16 8. For such other relief as the court may deem proper.

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18 DATED: June 22, 2016

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20 JULIE A. DOUMIT
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